Certain it is that the want of it was widespread, for the doctrine sprang up suddenly and almost simultaneously both in England[9] and America.[10] Taking public policy as the basis of the rule, it is hard to see how its arguments are rendered less cogent by the fact that the injured servant is a child of tender years. The Georgia case may be taken, however, as an illustration of the growing tendency in this country to restrict the operation of the fellow-servant rule.[11]

"VALUE" IN THE LAW OF NEGOTIABLE INSTRUMENTS. — Value sufficient to cut off equities is much the same in the law of negotiable instruments as it is in the law governing any other property. One who pays the purchase price, even though it is less than the face value, is a purchaser for value and entitled to recover the full face value of the instrument,[1] though some courts indeed hold that the purchaser can recover only as much as he has paid.[2] If, however, a partial payment only is made before notice, the holder may recover only so much as he has paid before such notice.[3] This is codified in the Negotiable Instruments Law.[4] A recent New York decision under this provision holds correctly that a bank, discounting a note and crediting the purchase price to the account of the transferrer, but receiving notice of an equity before it is drawn upon, is not a purchaser for value. *Albany Co. Bank* v. *Peoples', etc., Co.*, 30 N. Y. L. J. 2023 (N. Y. Sup. Ct., App. Div.). If the consideration given by the purchaser consists in a negotiable instrument which has already been negotiated, such purchaser would be a purchaser for value.[5] The same should be true even though the instrument given as consideration is not yet negotiated, unless its surrender is procured by the defendant, the maker of the first instrument, to prevent future negotiation. If it is already matured in the hands of the transferrer, since any subsequent holder of it would then take subject to all equities, the purchaser should not be deemed a purchaser for value.

A very material difference between negotiable paper and other property exists, however, in case of a transfer in payment of, or as security for, an antecedent debt. By the decided weight of authority a transfer of negotiable paper in payment of an antecedent debt is a transfer for value.[6] A common law consideration, by means of which to predicate value to the transferrer, was at first found, where the paper was payable at a future date, in the forbearance to sue on the old obligation until that date. This is, however, obviously lacking where the paper is payable on demand. The English case of Currie *v.* Misa[7] settled the matter by holding that the consideration consists, not in the forbearance to sue, but rather in the extinction of the old debt, which revives upon default of the instrument taken. In the case of a transfer as security, however, the New York case of Stalker *v.* McDonald,[8] held there was no transfer for value, and such is the weight of authority at

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[9] Priestley *v.* Fowler, 3 M. & W. 1.
[10] Murray *v.* S. C. R. Co., 1 McMull (S. C.) 385.
[11] Parker *v.* Hannibal & St. J. R. Co., 109 Mo. 362, 397.

[1] Lay *v.* Wissman, 36 Ia. 305.
[2] Holcomb *v.* Wyckoff, 35 N. J. 35.
[3] Dresser *v.* Railway Construction Co., 93 U. S. 92.
[4] Art. IV. § 54.
[5] Adams *v.* Soule, 33 Vt. 538.
[6] Swift *v.* Tyson, 16 Pet. (U. S.) 1.
[7] L. R. 10 Ex. 153.
[8] 6 Hill (N. Y.) 93.

common law. The United States Supreme Court[9] and several other courts have, however, reached the contrary result. Their attempt to find a consideration constituting value in the duty to present and give notice of dishonor seems illusory, and is obviously without foundation in the case of bearer paper. Commercial usage alone can be its justification. Several cases decided under the Negotiable Instruments Law to the effect that a transfer to secure an antecedent debt is a transfer for value[10] had encouraged the hope that the codification had effectually changed the rule so that all jurisdictions adopting this statute would be uniform on this point, as they are in the case of a transfer in payment of an antecedent debt. A New York case of last year, however, reaching the contrary result, has dispelled that hope. *Sutherland* v. *Mead*, 80 N. Y. App. Div. 103. This is probably contrary to the intention of the draughtsmen, but the blame must attach rather to the Act than to the court.

THE STANDARD OF CARE FOR CHILDREN. — It would obviously be unjust to judge the conduct of a child by the standards set for adults; it would be equally so to absolve him in every case from the consequences of his own negligence. An intermediate position has accordingly been taken, in most jurisdictions, requiring of infants the exercise of such care in avoiding injury as children of the same age of ordinary prudence are accustomed to exercise under the same or similar circumstances.[1]

In cases of contributory negligence two limitations upon this general rule have, however, been urged. Of these the first tends to restrict the scope of the rule. Thus it is assumed that infants *non sui juris* — that is, incapable in the judgment of the jury, of taking care of themselves — are not, in law, chargeable with the duty of exercising care to avoid injury.[2] It is difficult to support this position. To permit any individual who is capable of exercising care to be a heedless instrument of his own injury seems clearly at variance with the fundamental principle of the doctrine of contributory negligence. If, on the other hand, the theory is that all infants *non sui juris* are so devoid of judgment as to be incapable of negligence, that proposition is not true in fact. It can safely be asserted that experience teaches every child the danger of contact with various objects long before he may be termed *sui juris*. On such grounds the New York court lately decided that a refusal to instruct the jury that an infant *non sui juris* is answerable for his own negligence constitutes reversible error. *Atchason* v. *United Traction Co.*, 90 N. Y. App. Div. 571.

The second limitation referred to, and one which substantially alters the general rule, is suggested by a recent Georgia case. *Eagle & Phenix Mills* v. *Herron*, 46 S. E. Rep. 405. The court required of a child such care to avoid injury as his individual mental and physical capacity at the time fitted him to exercise. In testing the conduct of an adult, the law takes as a standard the case of the ordinarily prudent man under the circumstances, and declines to consider the personal equation.[3] It is hard to see why this refusal should not apply to children as well as to adults. Under similar circum-

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[9] Railroad Co. *v.* National Bank, 102 U. S. 14.

[10] Payne *v.* Zell, 98 Va. 294.

[1] Cleveland Rolling Mill Co. *v.* Corrigan, 46 Oh. St 283.

[2] See Kitchell *v.* Brooklyn Heights R. R. Co., 6 N. Y. App. Div. 99; Hyland *v.* Burns, 10 N. Y. App. Div. 386.

[3] Holmes, The Common Law 108 *et seq.*